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EXECUTIVE SECRETARY

October 15, 1999

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RE: Docket No. 98-00097; Proposed Amendments
to Rule 1220-4-2-.55 regarding IXC's

Dear Mr. Waddell:

Sprint Communications Company L.P. ("Sprint") has reviewed the Tennessee Regulatory Authority's proposed Amendments to Rule 1220-4-2-.55, Regulatory Reform of the Rules for Telephone Companies under Rules of the Tennessee Regulatory Authority.

Enclosed are the original and thirteen copies of the Comments of Sprint regarding the Proposed Amendments. Additionally, Sprint is jointly filing under separate cover revised amendments to Rule 1220-4-2-.55.

Please contact me or Laura Sykora (919-554-7323) if you have any questions.

Yours truly,

James B. Wright

Enclosures

cc: Dennis Wagner
Laura Sykora
Steve Parrott

#18128

FILE

Sprint Communications Company L.P.
Comments Regarding Proposed Rule Revision
To TRA Rule 1220-4-2-.55(2)
Docket No. 98-00097
October 15, 1999

Sprint Communications Company L.P. submits these comments relative to the promulgation of rules and the amendment of rules pursuant to Tennessee Code Annotated Section 65-2-102.

I. Introduction & Background

In February of 1997, Sprint filed a tariff¹ with the Tennessee Regulatory Authority to simplify time of day periods. Sprint desired to further simplify calling in Tennessee by moving to a 7:00 PM to 7:00 AM off peak schedule. This tariff proposed to provide customers with Sprint's best rates beginning at 7:00 PM rather than waiting until 11:00 PM. The tariff would have allowed for significant savings during the time period that consumers called most, and four hours earlier each day. Although rates were not increasing per se, the tariff was rejected as a rate increase since calling from 5:00 PM to 7:00 PM would be included in the peak rate period versus the traditional evening rate. The tariff was rejected on a technicality because a customer that called between 5:00 PM and 7:00 PM would experience slightly higher rates than they did prior to the change in peak/off peak scheduling. While a caller that makes the vast majority of calls between 5:00 PM and 7:00 PM may experience an increase in overall long distance spending, those callers that would take advantage of the new off-peak rates after 7:00 PM would

¹ Sprint Communications, tariff filing 97-265 to restructure rate period for Sprint service, FONCARD, and operator service calls made by residential customers.

certainly experience a decrease. In essence, TRA Rule 1220-4-2-.55(2) served to prevent customers from receiving Sprint's lowest rates, four hours earlier each day.

As a result of that proceeding, Sprint and the other Tennessee interexchange carriers pursued a rulemaking to reevaluate the pricing and tariffing rules governing interexchange carriers (IXCs) in Tennessee. The original petition and proposed rules filed February 13, 1998 in this docket are the result of key industry members pursuing the changes required by the highly competitive and customer-driven IXC market.

More recently, on June 22, 1999, Sprint appeared before the TRA in its Directors' Conference to address its filing to flow through savings received from access reductions². During that process, Sprint carefully explained its view of the competitive market, consumer preferences, and company strategy. Sprint articulated an approach to flow through that clearly accomplishes the goal of lower long distance prices while maintaining the integrity of national pricing plans that cannot simply be reduced.

Although Sprint was ultimately not successful in its request for this flexibility, Sprint believes that its approach was acknowledged as a legitimate flow through method and even beneficial to customers. At the conclusion of that discussion, Staff was encouraged to open a docket for the purposes of reevaluating the appropriateness of pricing and tariff rules on IXCs. In fact, Director Greer acknowledged that they were again faced with the "dilemma" of rejecting a seemingly viable approach due to the language found in existing rules. Additionally, Director Kyle, in her comments, acknowledged that customers "deserve the best" and that Sprint appeared to be "bring[ing] them the best" through its product approach. However, she too seemed to be

² Case Number 99-00329, Sprint Communications Company, L.P. Tariff to flow through 4/1/99 access reduction.

constrained by the existing rules and voted to oppose our filing. In its Order filed on July 2, 1999, the Authority further illustrated the obvious conflict between what is desired for consumers and rules that ultimately prevent Tennesseans from receiving what is best:

The Authority is not opposed to, and even *encourages, strategies for repackaging services in an effort to provide consumers with calling plans and rates that best suit consumers' calling patterns.* The Authority finds that Sprint's repackaging of services, however, does not satisfy the requirements of the IXC Rule because DDD prices and price cap are not being lowered to reflect the net reduction in access charges.³ (emphasis added)

Sprint's experience at the June 22nd Directors' Conference provided additional signals to Staff and industry, that these rules must be addressed in light of these sorts of customer affecting "dilemmas".

II. Staff's Proposed Rules Do Not Provide Necessary Flexibility

The rules proposed by Staff in this docket do not adequately "encourage strategies for repackaging services" or provide consumers rates that best suit their calling pattern, a concern of the Directors and petitioners in this case. In fact, the proposed rules do little to grant the flexibility that is both appropriate and required in competitive markets. In a competitive market, customers are the regulators. In fact, the introduction of regulation in a purely competitive market only serves to erect artificial barriers that add cost to the business and remove customers from the role of arbiters of reason. In a competitive market, if an industry member acts inappropriately, customers take action to punish the "offender" by moving to competitors that are busily capitalizing on their rival's lack of judgement. For example, if a product is changed or a price is increased beyond what a

³ See "Order Approving Tariff as Filed and Directing Sprint Communications Company, L.P. to Flow Through an Additional \$463,000 in DDD Rate Reductions by July 1, 1999" (p. 2). Docket No. 99-00329.

customer feels is reasonable, competitors will exploit the tactical error in the marketplace. In addition, the ease of conversion allows customers to quickly obtain a new long distance provider. As that happens, the carrier will make adjustments to avoid further marketshare erosion. It is also likely that the carrier will take care to avoid making the same mistake again. In a competitive market, customers have the power to shape the offerings and prices carriers charge.

Sprint requests that the TRA grant significantly more flexibility in the rules for the competitive IXC market to allow for market factors in accordance with T.C.A. § 65-5-208(b)⁴.

III. The Minimum Usage Charge issue is not relevant to this proceeding and should not affect the result of this petition

In an effort to provide Staff with assurance that the IXC market is not controlled by one dominant player with a number of pure followers, it should be highlighted that Sprint has no Minimum Usage Charge (MUC) for low volume users. Sprint has not implemented a MUC on its basic rate products. While the financial justification for MUCs is understandable, Sprint has chosen to avoid this practice on its basic products as a strategic move within a competitive marketplace. Sprint has evaluated the option of instituting a MUC as our major competitors have, yet has decided not to engage in this practice at this time.

⁴ TCA § 65-5-208(b) states "The Authority, after notice and opportunity for hearing, may find that the public interest and the policies set forth herein are served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the Authority may exempt telecommunications service providers from such requirements as appropriate. The Authority shall, in any event, exempt a telecommunications service for which *existing and potential competition* is an effective regulator of the price of those services" (emphasis added).

Sprint understands that its rivals' implementation of the MUC has resulted in a chorus of disapproval from Consumer Advocates and individual consumers as well. Sprint further understands the pressure that the TRA and its Staff must be experiencing as a result of MUCs. However, Sprint wishes to encourage the TRA to not be blinded by this emotional issue when making decisions regarding price regulation on IXC. The MUC is *not* a sign of things to come if IXCs are granted pricing flexibility. It is *not* evidence of IXC abuse. In fact, it is possible to argue that MUCs help keep per minute costs of long distance low for the majority of customers by allowing carriers to cover their normal billing and customer care costs. There is a certain degree of responsibility required on the part of low volume customers to investigate their options. Customers continue to have choices in this regard as Sprint and other IXCs provide a non-MUC option and "No-PIC" options such as 10-10-XXX products and prepaid calling cards become more mainstream. This is evidence that customers will continue to have choices if something in the marketplace occurs to cause dissatisfaction.

IV. Small marketshare companies can drive savings and simplicity to consumers and cause significant change in the IXC market

To provide the TRA with even more assurance that the IXC market is not controlled by one dominant player, it should be further noted that even small marketshare companies can cause significant change in the IXC market. Sprint has provided clear leadership in driving low rates, simplicity, and value to customers. Sprint's leadership in this regard can be clearly observed by looking at three key events. Several years ago, long distance products were characterized by complicated mileage bands and varying rates. Customers found bills to be confusing and could not even accurately identify the

per minute rate they were paying. Sprint, a sub-10 percent marketshare player, saw a need and changed everything. Suddenly customers knew that if they called after 7:00 PM, they would pay a dime. Soon Sprint was joined, in various ways, by other market players as they sought to differentiate themselves in light of the new paradigm brought about by Sprint. Eventually long distance consumers began to receive special discounts on calls to "Friends and Family", or to the person they called "The Most."

In addition, recently Sprint led the market again with a foray into flat rate pricing as Sprint Unlimited was launched giving consumers unlimited weekend calling for a flat \$25 per month. Again, some industry members chose to offer similar products while others chose not to enter the flat rate game.

Finally, Sprint again caused significant change in the market by ushering in new lower prices and embracing the five cent rate as "Nickel Nights" was launched. Quickly MCI Worldcom launched a competing product and AT&T responded with its 7¢ One Rate plan. These examples are provided simply to illustrate that the IXC market operates independently of pure marketshare, and in the best interest of consumers.

V. Conclusion

Sprint believes that the rules proposed by the petitioners in this docket are appropriate because they remove or modify restrictive pricing rules that are no longer necessary, or even permissible,⁵ to regulate the highly competitive IXC market. As demonstrated clearly by other petitioners in this docket, there can be no doubt that competition exists in the IXC market. The TRA can be confident that granting new

⁵ See T.C.A. § 65-5-208(b) regarding TRA authority to regulate competitive industries.

flexibility to IXC's will result in continued commitment to flow through access savings to customers, pricing practices that are in consumers' overall best interests, and a continued commitment to exceptional customer satisfaction and loyalty.

Rules that serve to place unnecessary restrictions on competitive companies have been and will continue to result in harming the consumers they seek to protect.